

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, TOBAGO**

Claim No. CV 2019-03135

**IN THE MATTER OF THE JUDICIAL REVIEW ACT CHAPTER 7:08 AND IN THE
MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF
THE DECISION OF THE CHIEF ADMINISTRATOR OF THE TOBAGO HOUSE OF
ASSEMBLY TO FAIL TO RENEW THE APPLICANT'S CONTRACT OF SERVICE**

BETWEEN

SHIVANAND RAMNANAN

Applicant/Intended Claimant

AND

TOBAGO HOUSE OF ASSEMBLY

Respondent/Intended Defendant

BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH

APPEARANCES:

Mr Odai Ramischand and Mr Navindra Ramnanan for the Claimant

Mr Russell Martineau SC leading Ms Lesley-Ann Gray and Mr Kimba Anderson
for the Respondent

Date: 6 November 2019

RULING

1. The applicant filed an ex parte application for leave to bring judicial review proceedings against “The Chief Administrator, Tobago House of Assembly”. He also filed an application for interim relief.
2. He had a two year contract as Procurement Manager at the Tobago House of Assembly (THA). This expired in August 2019. The contract was not renewed.
3. The application for interim relief came up for hearing during the court long vacation. On 9 August 2019, Rampersad J gave a ruling refusing interim relief pending the hearing of the interim relief application. He refused as it were to give “interim, interim” relief. He deemed the matter fit for urgent hearing and gave directions for the filing of affidavits by the THA and replies by the applicant. A date for hearing of

the interim relief application was set for 27 August 2019. This came up before M. Mohammed J. Meanwhile, affidavits were filed by both sides on the interim application.

4. On 26 August 2019, the applicant filed an amended interim application and an amended application for leave to bring judicial review proceedings. The amended application for interim relief and amended leave application did not only amend the substance of the applications, but also substituted the respondent from being “The Chief Administrator, Tobago House of Assembly”, to “Tobago House of Assembly”.
5. The judge did not hear the interim application but adjourned it before me, the docketed judge, for a status hearing on 18 September 2019. Counsel for the applicants indicated they were unable to attend on that date and, after some toing and froing on the dates, the matter was adjourned to 30 October 2019.
6. All affidavits by the respondent, The Chief Administrator, Tobago House of Assembly, were filed on the basis of the original application for interim relief. Thus they sought to answer the application brought against The Chief Administrator.
7. At the hearing before me on 30 October 2019, Mr Ramischand made a formal oral application to amend the applications inclusive of the change

of the respondent party as indicated. This was done under Part 19.5 and Part 56.4 of the CPR.

8. Mr Martineau in submissions has indicated the THA is prejudiced because they have deployed their case in answer to what was filed. This case was that the Chief Administrator was the alleged decision maker and it must have been her decision that was sought to be impugned. Mr Ramschand submitted that the communications before the claim suggested that she was the one who purported to make the decision not to renew the applicant's contract. After considering the THA Act, Guidelines for Contract Employment and other documents, including the evidence filed by the respondent, he recognised that the proper party had to be the Tobago House of Assembly since it is only the THA that can make decisions as to renewal of contracts in this instance.

9. Mr Martineau says his client is prejudiced. They have filed affidavits and they have deployed a response based on what is filed. They will now have to re-look at their case and take fresh instructions, now from the THA, and probably consider whether there is need for filing of new affidavits. I agree that these are matters the respondent may now have to do at his stage to meet the applicant's case. Clearly there would have been some waste of time and resources and there will be the need for redeployment of resources once again. However, inconvenience aside, these are matters which can be dealt with by an appropriate costs order at the relevant time. I do not think there is real prejudice as such on the THA.

10. There are countervailing consequences for the applicant if he is not granted permission to change the party or to amend at this stage. First, he may have the wrong party before the court. Accordingly, he may not have the appropriate party against whom effective relief can be obtained from if he succeeds. It is therefore for the just and effective disposition of the case to allow the change of parties: **Dr Wing Sang Chin v Noel Garcia and Others, P – 342 – 2017**, per Mendonca JA.

11. I have also considered that the CPR allows amendments to be made to a claim and statement of case before the case management conference without permission being needed. These are judicial review proceedings and the court had not as yet decided on leave at the time the interim application came up for hearing. For the respondent, there may be cost and convenience consequences. For the applicant the consequences of not allowing him to change the party or to amend would be far more prejudicial. At the end of the day, it is in the interest of justice to allow the applicant to change the party requested and to amend his applications.

12. In any event, as noted, the court had not determined the leave application and given directions. It is doubtful even whether the court's permission is needed to amend the leave application at this stage.

13. Accordingly, on the application for leave and interim application I order that the applicant is permitted to substitute as the party the “Tobago House of Assembly” instead of “The Chief Administrator Tobago House of Assembly”.

14. On the interim relief application I order as follows:

- i. All affidavits filed in support of the interim application against the Chief Administrator, “Tobago House of Assembly” and the amended interim relief application to stand. The applicant may rely on these affidavits.
- ii. All affidavits previously filed by the previous respondent, The Chief Administrator, Tobago House of Assembly, to stand. The new respondent, Tobago House of Assembly, may rely on these affidavits.
- iii. The Tobago House of Assembly is permitted file and serve any additional affidavits occasioned by the amendment to the interim relief application on or before 22 November 2019.
- iv. Submissions by the applicant on the interim relief application to be filed and served on or before 6 December 2019.
- v. Submissions by the Tobago House of Assembly on the interim relief application to be filed and served on or before 20 December 2019.

- vi. The application for interim relief is adjourned for decision on 9 January 2020 by video conference to Tobago from Port of Spain.
- vii. Costs occasioned to The Administrator, Tobago House of Assembly, to date, on the interim relief application to be paid by the applicant to The Administrator, Tobago House of Assembly, to be assessed in default of agreement.

Application for Leave

15. At this stage, I have further gone on to consider the application for leave to bring judicial review proceedings. The application was filed at the end of the last law term and requires a decision to be made. It was filed ex parte. The court is entitled to consider it as such and make a determination at this stage. I am not required to consider this as an inter partes hearing unless I need assistance from the parties. I also think it is just to do so because of the time that has already passed since the filing of the application and the nature of the claim involved.
16. Applying the test in *Sharma v Deputy DPP [2006] UKPC 57*, I am of the view that the applicant has met the threshold to be granted leave to file judicial review proceedings.
17. In summary I would note the THA is exercising a public function; the decision to renew and the process by which the decision was arrived at

is being challenged; the grounds for challenge are appropriate judicial review grounds; the applicant has set out facts which, if accepted, meet the Sharma test.

18. I have noted that the applicant has included constitutional relief as well in his application. Leave is not required to bring a constitutional relief claim. The courts have, in recent times, seen judicial review and constitutional claims being brought together in the same claim. I can see no reason in principle why this should not be possible in an appropriate case. An applicant does risk consequences in costs where claims are conflated in this way, but an applicant is allowed to take such risks.

19. I would observe therefore that whatever relief is being sought in the judicial review claim which I am required to consider and give permission for, is all that I am required to include in my order. The applicant may choose to add whatever constitutional relief he is seeking, which can be heard as part of the same claim. If the applicant so chooses to add constitutional matters, then the Attorney General would have to be added as a party and has to be served with the proceedings. It is not necessary for me to give such directions or consider that matter at this stage however. That is a matter for the applicant to make a determination of at this stage.

20. Permission is given to the applicant to bring judicial review against the Tobago House of Assembly, for the following reliefs, based on the application filed and reliefs sought, on the terms set out here:

- i. A declaration that the procedure adopted by the Respondent, The Tobago House of Assembly (the Respondent), in not renewing the Applicant's contract was improper, irregular and in breach of the rules of Natural Justice and principles of fundamental justice and the Applicant was not treated fairly pursuant to section 20 of the JRA Act.
- ii. A declaration that the decision of the Respondent to not renew the contract of the Applicant is irrational and/or unreasonable.
- iii. A declaration that any purported change in policy was done in bad faith and the Applicant was not consulted or informed of said "shift" in "policy".
- iv. A declaration that the Applicant has a substantive legitimate expectation based on expressed assurances that his contract would be renewed and recommenced based on performance, from 2 August 2019.
- v. A declaration that that it was unreasonable, irregular, an improper exercise of discretion and not in accordance with the principles of

natural justice since the Applicant was treated unfairly so much so to amount of bad faith and or an abuse of power.

- vi. A declaration that the Applicant had a procedural legitimate expectation that the factors and or considerations outlined in the Chief Administrator's letter wherein she stated the factors to be considered in making the decision to renew would be considered in arriving at the decision to renew the contract.
- vii. A declaration that the Applicant had a procedural legitimate expectation that he would be entitled to make representations on any other factors taken into consideration by the Respondent, in arriving at its decision.
- viii. An Order of Certiorari to remove into the High Court and quash the decision of the Respondent.
- ix. An order of mandamus directing the Respondent to fulfil the substantive legitimate expectation of the Applicant to renew his contract of employment based on the representations made therewith.
- x. Alternatively an order of mandamus directing the Respondent to renew the Applicant to the position retroactively based on the considerations utilized by the Respondent in making its decision.

- xi. Damages and/or compensation including aggravated and/or exemplary damages.
- xii. The Applicant be paid for the loss of salary from the date of non-renewal to the date of judgment.
- xiii. Reasonable compensatory award for the non-pecuniary distress and inconvenience suffered as a direct result of being non – renewed with no good reason.
- xiv. Alternatively, loss of salary from the date of non – renewal to the date of judgment.
- xv. Interest.
- xvi. Costs.
- xvii. Such further other orders or directions as the court considers just and as the circumstances of this case warrant pursuant to section 8 (1)(d) of the **Judicial Review Act 2000**.

21. The Fixed Date Claim is to be filed and served on or before 22 November 2019.

22. The Applicant is permitted to rely on affidavits previously filed in these proceedings.
23. The Applicant is to file a bundle on or before 13 December 2019 consisting of the Fixed Date Claim and all affidavits filed by the applicant in the order in which they were filed and all affidavits filed by the respondent to date.
24. I have noted that the applicant has filed affidavits and supplemental affidavits. It would obviously be better if the evidence to be advanced is filed together. Further, as a reminder, it is noted that affidavits should be confined to factual and evidential matters and not include statements of law or argument. The latter are the proper remit of submissions. The affidavits become unduly lengthy when law and arguments are included and take away from the clear statement of facts upon which the party relies. Where the affidavits contain inadmissible material this invites evidential objections which potentially slows down the resolution of the case.
25. A party must put forward relevant and pertinent evidence to what the court has to decide. This is related to the grounds for judicial review and the reliefs being sought. Generally, from an evidential point of view, the court is concerned with what was before the decision maker at the time when the decision is made and not what took place after. What took place after would generally not be relevant except if it shows some admission or sheds light on what the decision maker took account of

when the decision is made. Gratuitous commentary and submissions should not form part of affidavits. Opinions should only be included where a person is suitably qualified to give such an opinion and where it is relevant. Observations on the other side's evidence should be confined to matters which it is relevant and necessary to reply to.

26. A case management conference will be held on 9 January 2020 at 11.00 am in Port of Spain, subject to appropriate arrangements for video conferencing to Tobago.

Ronnie Boodoosingh

Judge